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07 UNITED STATES DISTRICT COURT  
08 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 LINDA HABA, ) CASE NO. C10-0540-MAT  
10 Plaintiff, )  
11 v. ) ORDER RE: CONSIDERATION AND  
12 MICHAEL J. ASTRUE, Commissioner ) NOTING OF DEFENDANT'S  
of Social Security, ) RENEWED MOTION TO DISMISS  
13 Defendant. )  
14 \_\_\_\_\_ )

15 Defendant submitted a Renewed Motion to Dismiss based on plaintiff's failure to  
16 comply with the applicable statute of limitations. (Dkts. 25 & 26.) Because the motion is  
17 accompanied by a declaration and attachments, the consideration of which the Court finds  
18 necessary, it will be treated as a motion for summary judgment. *Jablon v. Dean Witter & Co.*,  
19 614 F.2d 677, 682 (9th Cir. 1980). *See also* Fed. R. Civ. P. 56(a) ("The court shall grant  
20 summary judgment if the movant shows that there is no genuine dispute as to any material fact  
21 and the movant is entitled to judgment as a matter of law.") In so doing, the Court must  
22 provide both parties with the opportunity to submit material pertinent to the motion. *Id.*; Fed.

01 R. Civ. P. 12(d). *See also Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir.  
02 1995) (“When the district court transforms a dismissal into a summary judgment proceeding, it  
03 must inform a plaintiff who is proceeding pro se that it is considering more than the pleadings,  
04 and must afford a reasonable opportunity to present all pertinent material.”) Accordingly, the  
05 Court hereby notes defendant’s pending motion for consideration as a motion for summary  
06 judgment on **January 28, 2011**. Plaintiff may submit a response to the motion on or before  
07 **January 24, 2011** and defendant may submit a reply on or before the noting date.

08 DATED this 4th day of January, 2011.

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11 Mary Alice Theiler  
12 United States Magistrate Judge  
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